(7)

No. 95-336

MOTION FILED

FEB 8 1996

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JASON RICHARDS and FANNIE HILL,
Petitioners,

v.

JEFFERSON COUNTY, ALABAMA and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,
Respondents.

On Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS, NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL LEAGUE OF CITIES, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850
* *Counsel of Record for the* Amici Curiae

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

28 pp

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-386

JASON RICHARDS and FANNIE HILL,
Petitioners,

v.

JEFFERSON COUNTY, ALABAMA and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,
Respondents.

On Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS, NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL LEAGUE OF CITIES, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

Pursuant to Rule 37.3 of the Rules of this Court, *amici* respectfully move for leave to file the attached

brief *amicus curiae* in support of respondents. Respondents have consented to the filing of the brief. This motion is made necessary by the failure of petitioners' counsel to respond to repeated requests for consent to the filing.

Amici, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments. To the extent this case presents the question of whether Jefferson County's occupational tax violates the equal protection clause of the Fourteenth Amendment, it challenges the broad discretion traditionally enjoyed by state and local governments in structuring state and local tax schemes and in creating tax classifications. This issue is of fundamental importance to *amici* who, in formulating tax policy, must weigh numerous and frequently competing considerations.

Since shortly after the ratification of the Fourteenth Amendment, the Court has rejected the notion that the equal protection clause "compel[s] the states to adopt an iron rule of equal taxation" and has recognized that a State "may impose different specific taxes upon different trades and professions." *Bell's Gap R.R. Co. v. Pennsylvania*, 134 U.S. 232, 237 (1890). The Court has reaffirmed these principles in numerous cases and placed the burden on the taxpayer to "negative every conceivable basis which might support" a tax classification. *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 547 (1983) (citation omitted). The preservation of these principles is essential if state and local governments are to adapt their tax systems to ever changing social and economic conditions.

Because this issue is of extraordinary importance to *amici* and their members, *amici* respectfully move for leave to file the attached brief *amicus curiae* in support of respondents.

Respectfully submitted,

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850
* *Counsel of Record for the* Amici Curiae

February 1996

QUESTION PRESENTED

Amici will address the following question:

Whether Jefferson County's occupational tax, which exempts persons required to pay license taxes under state law, violates the equal protection clause.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
INTEREST OF THE *AMICI CURIAE*	1
STATEMENT	2
SUMMARY OF ARGUMENT	4
ARGUMENT	7
JEFFERSON COUNTY'S OCCUPATIONAL TAX SATISFIES THE EQUAL PROTECTION CLAUSE	7
A. States Have Broad Discretion to Create Tax Classifications Under the Equal Protection Clause	8
B. The Jefferson County Occupational Tax Does Not Violate the Equal Protection Clause	13
CONCLUSION	20

TABLE OF AUTHORITIES

Cases — Page

A. Magnano Co. v. Hamilton, 292 U.S. 40 (1934) 12
Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty., 488 U.S. 336 (1989) 20
Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522 (1959) 5, 9, 14
American Sugar Refining Co. v. Louisiana, 179 U.S. 89 (1900) 12
Armour Packing Co. v. Lacy, 200 U.S. 226 (1906) 15
Bell's Gap R.R. Co. v. Pennsylvania, 134 U.S. 232 (1890) 8, 8-9, 14
Bedingfield v. Jefferson County, 527 So.2d 1270 (Ala. 1988) 2, 3
Bradley v. City of Richmond, 227 U.S. 477 (1913) 9, 12
Brown-Forman Co. v. Kentucky, 217 U.S. 563 (1910) 12
Carmichael v. Southern Coal & Coke Co., 301 U.S. 495 (1937) .... *passim*
Casey Baking Co., Inc. v. Virginia, 313 U.S. 117 (1941) 12
Heckler v. Mathews, 465 U.S. 728 (1984) 17
Heisler v. Thomas Colliery Co., 260 U.S. 245 (1922) 12
Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 20
Independent Warehouses, Inc. v. Scheele, 331 U.S. 70 (1947) 12
Kehrer v. Stewart, 197 U.S. 60 (1905) 12, 15
Leathers v. Medlock, 499 U.S. 439 (1991) 4-5, 8, 11-12
Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356 (1973) 12, 13, 14
Lochner v. New York, 198 U.S. 45 (1905) 15
Madden v. Kentucky, 309 U.S. 83 (1940) 12, 13
Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869 (1985) 20
New York Rapid Transit Corp. v. City of New York, 303 U.S. 573 (1938) 8, 13
Nordlinger v. Hahn, 505 U.S. 1 (1992) 8, 17, 20
Ohio Oil Co. v. Conway, 281 U.S. 146 (1930) 12

TABLE OF AUTHORITIES—Continued

Page

Quong Wing v. Kirkendall, 223 U.S. 59 (1912) 9, 9-10, 10, 18
Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983) .... *passim*
Southwestern Oil Co. v. Texas, 217 U.S. 114 (1910) .... *passim*
Swiss Oil Corp. v. Shanks, 273 U.S. 407 (1927) 12
Tax Comm'rs of Indiana v. Jackson, 283 U.S. 527 (1931) 6, 12, 15
Walters v. City of St. Louis, 347 U.S. 231 (1954) 12, 15
WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117 (1968) 20
Williams v. Fears, 179 U.S. 270 (1900) 9
Zobel v. Williams, 457 U.S. 55 (1982) 20

Constitutional Provisions, Statutes and Ordinances

U.S. Const. amend. XIV 8
1967 Ala. Acts 406 2
Ala. Code §§ 40-12-1 *et seq.* 2
Ala. Code § 40-12-2(c) 2
Ala. Code § 40-12-2(e) 2
Ala. Code § 40-12-43 2
Ala. Code § 40-12-48 2
Ala. Code § 40-12-49 2
Ala. Code § 40-12-126 2
Ala. Code § 40-12-135 2
Ala. Code § 40-12-136 2
Ala. Code § 40-12-155 2
Jefferson County Ordinance No. 1120 § 1(B) 3
Jefferson County Ordinance No. 1120 §§ 1-2 .... 3, 14
License Code of Jefferson County, Alabama 3

Other Authorities

1992 County and City Extra—Annual Metro, City and County Data Book (Courtenay M. Slater and George E. Hall eds., 1992) 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-386

JASON RICHARDS and FANNIE HILL,
Petitioners,

v.

JEFFERSON COUNTY, ALABAMA and BIRMINGHAM-JEFFERSON CIVIC CENTER AUTHORITY,
Respondents.

On Writ of Certiorari to the Supreme Court of Alabama

BRIEF OF THE NATIONAL ASSOCIATION OF COUNTIES, COUNCIL OF STATE GOVERNMENTS, NATIONAL CONFERENCE OF STATE LEGISLATURES, INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL LEAGUE OF CITIES, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICI CURIAE*

The interest of the *amici* is set forth in the motion accompanying this brief.

STATEMENT

1. Beginning in 1927, Alabama enacted a series of statutes requiring firms and persons engaged in various businesses, occupations, avocations and professions to obtain licenses and pay license taxes. *See* Ala. Code §§ 40-12-1 *et seq.* Some of these provisions —namely those applicable to persons in regulated professions such as actuaries, auditors and public accountants, *id.* § 40-12-43, architects, *id.* § 40-12-48, attorneys, *id.* § 40-12-49, and medical professionals, *id.* §§ 40-12-126, 40-12-135, 40-12-136, 40-12-155— specifically exempt persons subject to them from the payment of license tax to the county where they practice. Alabama law, however, specifies that unless a licensing statute specifically exempts one from obtaining a county license, a licensee must pay a county license tax which is set at 50 percent of the state tax. *Id.* § 40-12-2(c) & (e).

Because of growing demand for Jefferson County's services, in 1967 the Alabama legislature enacted Act No. 406.[1] *See Bedingfield v. Jefferson County*, 527 So.2d 1270, 1270-71, 1274 (Ala. 1988). Act No. 406 granted counties having a population of 500,000 or greater authority "to levy a license or privilege tax upon any person [or entity] for engaging in any business" which was not already subject to state and/or county license taxes under the various provisions of the Alabama code. 1967 Ala. Acts 406 (reprinted at J.A. 33-34). Shortly thereafter, Jefferson County exercised the authority granted it by Act

[1] Respondent Jefferson County is Alabama's most populous county in both total population and density. *1992 County and City Extra—Annual Metro, City and County Data Book* 36 (Courtenay M. Slater and George E. Hall eds., 1992).

No. 406 to enact a license code requiring persons and firms engaged in various businesses, occupations and professions to obtain licenses and pay a license tax. *See* License Code of Jefferson County, Alabama as amended.

In 1987, the Jefferson County Commission, under the authority of Act No. 406, enacted Ordinance No. 1120. *See Bedingfield*, 527 So.2d at 1270-71. Ordinance No. 1120 imposes an occupational tax of one-half percent on the gross receipts (including salaries, wages, commissions and bonuses) of all natural persons engaging in any "vocation, occupation, calling and profession" within the county. Ordinance No. 1120 §§ 1-2 (reprinted at J.A. 35-37). Ordinance No. 1120, however, excludes from its definition of "vocation, occupation, calling and profession" those "domestic servants employed in private homes" and those "businesses, professions or occupations for which license fees are required to be paid under any General License Code of the County or to the State of Alabama or the County" under the aforementioned provisions of the Alabama code. *Id.* § 1(B) (reprinted at J.A. 35).

2. Petitioners brought this suit challenging the validity of the Jefferson County occupational tax. Petitioners alleged *inter alia* that the tax violated the equal protection clause of the Fourteenth Amendment. *See* J.A. 5-12. Respondent Jefferson County moved for summary judgment on the ground that the suit was barred as *res judicata*. *See id.* at 25. The trial court granted the motion to the extent petitioners' suit sought to relitigate state law questions resolved in an earlier taxpayer suit, *Bedingfield v. Jefferson County*. *Id.* at 105-06. The trial court, however, denied the motion to the extent petitioners'

suit challenged the tax under federal law including the equal protection clause. *Id.* The trial court subsequently certified for interlocutory appeal its denial of summary judgment on petitioners' equal protection claim. *Id.* at 106-09.

On appeal, the Alabama Supreme Court reversed. The court specifically noted that one of the complaints in the *Bedingfield* action had alleged that the tax "constitutes a denial of equal protection in violation of the Fourteenth Amendment . . . . *Said Act exempts professional occupations required by State law to be licensed but does not exempt other professional and nonprofessional occupations.*" J.A. 113. According to the court, "[t]his allegation is the substance of the allegations made in the complaint now before the Court." *Id.* The court thus reasoned that because the claim had been pleaded, "it [wa]s at least true that [it] 'could have been adjudicated'" in the *Bedingfield* action. *Id.* at 114 (citation omitted). Further reasoning that "[t]he taxpayers in the *Bedingfield* action adequately represented the interests of the taxpayers here" and that "the respective taxpayers' interests" were "essentially identical," the court held that the current action was barred by the doctrine of *res judicata*. *Id.* at 115.

SUMMARY OF ARGUMENT

1. This Court has long recognized that the equal protection clause places only a limited restriction on the States' use of tax classifications. The Court has recently reaffirmed that "[i]nherent in the power to tax is the power to discriminate in taxation" and that "[l]egislatures have especially broad latitude in creating tax classifications and distinctions in tax statutes." *Leathers v. Medlock*, 499 U.S. 439, 451

(1991) (citation omitted). In a long line of cases the Court has held that "[a] State may impose different specific taxes upon different trades and professions" and may exempt entire occupations from taxation. *E.g., Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-27 (1959).

There are sound reasons for the Court's traditional deference to these inherently legislative judgments. In formulating tax policy, legislatures must examine numerous and frequently competing considerations. And in striking the balance between these considerations legislatures must necessarily make value judgments. Thus, unless a tax classification "discriminates invidiously" against a fundamental right or a suspect class, it is valid if it "bear[s] a rational relation to a legitimate governmental purpose." *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 547-48 (1983). The Court has further held that it is the taxpayer's burden "'to negative every conceivable basis which might support'" the classification. *Id.* at 548 (citation omitted).

2. As petitioners concede, the classifications employed in Jefferson County's occupational tax do not implicate fundamental rights or suspect classes. The scheme is paradigmatic economic legislation which is presumptively constitutional. Petitioners' assertion that those occupations which are exempt from the tax "are not fairly different in the workplace" from those occupations which pay it (Pet. Br. 15) only demonstrates their fundamental misunderstanding of the role of courts in reviewing social and economic legislation. The equal protection clause simply makes none of the value judgments which would support judicial invalidation of the legislative judgments made in enacting the tax. The clause does not require the

State to tax different occupations in the same manner. Nor does it require that the burdens of taxation be allocated among occupations in accordance with their relative contributions to society. In short, when a case presents a claim of economic unfairness, "it is not the function of this Court . . . to consider the propriety or justness of the tax." *Tax Comm'rs of Indiana v. Jackson*, 283 U.S. 527, 537 (1931).

There are, moreover, several readily ascertainable bases for the exemptions of those already required to pay license tax under state law. Because licensees already pay license tax to the State and frequently the county, the State could have rationally concluded that subjecting licensees within Jefferson County to additional taxes at the county level would have a deleterious effect on them, especially in relation to licensees in surrounding counties. Or the State could have rationally concluded that granting state licensees an exemption from additional county taxes would ensure within the county the continued availability of both the professional services and the jobs provided by them. State and local governments have a compelling interest in preserving the viability of urban communities. Creating tax exemptions for professionals and businesses located in urban areas is a rational means of furthering this important governmental interest.

ARGUMENT

JEFFERSON COUNTY'S OCCUPATIONAL TAX SATISFIES THE EQUAL PROTECTION CLAUSE

Petitioners' principal equal protection challenge to Jefferson County's occupational tax is that it creates a tax exemption scheme, which they assert "exempts from its levy, collection and payment businesses and vocations or occupations" subject to license tax under state law. *See* Pet. App. 26-27 (Complaint ¶ 14). Petitioners "further complain[] that the net effect, dollarwise, of the occupational tax, [is] an absurdity which allow[s] persons earning hundreds of thousands of dollars a year to completely avoid the tax by paying, individually or through their employers, a small license fee . . . ."[2] Pet. Br. 4. According to petitioners, this exemption scheme renders the tax "unreasonable, arbitrary and irrational" and violates the equal protection clause. *Id.* at 15.

The Court should reject petitioners' equal protection claim. As explained below, the Court has repeatedly rejected arguments similar to those advanced here by petitioners. The tax's exemptions fall well within the range of lawful discretion which state and local governments possess in creating tax classifications.

---

[2] Petitioners assert that persons employed by licensed businesses "receive complete exemption from the tax." Pet. Br. 8. Petitioners further maintain that the county "completely exempts, without explanation, all employees of these powerful business interests without requiring licensure, or payments of any kind to the state or county." *Id.* These contentions are erroneous. *See* Respondents' Brief, Statement, Section F.

A. States Have Broad Discretion to Create Tax Classifications Under the Equal Protection Clause

This Court has long recognized that the Fourteenth Amendment's command that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws" does not prohibit all classifications. *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992); *see also New York Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 578 (1938). Indeed, in the area of taxation the Court has repeatedly stated that "[i]nherent in the power to tax is the power to discriminate in taxation" and that " '[l]egislatures have especially broad latitude in creating classifications and distinctions in tax statutes.' " *Leathers v. Medlock*, 499 U.S. 439, 451 (1991) (quoting *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 547 (1983)).

While petitioners ignore that decisions as to whether to tax or exempt particular occupations are fundamentally the province of legislatures, the Court has recognized as much since shortly after the adoption of the Fourteenth Amendment when it rejected the notion that the equal protection clause "compel[s] the states to adopt an iron rule of equal taxation." *See Bell's Gap R.R. Co. v. Pennsylvania*, 134 U.S. 232, 237 (1890). Indeed, as the Court recognized in *Bell's Gap Railroad*, the equal protection clause

> was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rate of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for the payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the state in framing their constitution.

Id. at 237; *see also Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-27 (1959) ("The State may impose different specific taxes upon different trades and professions.").

Bell's Gap Railroad involved a tax on bonds issued by a corporation and not an occupational tax. Numerous cases demonstrate, however, that the States retain equally broad authority with respect to occupational and license taxes. *See, e.g., Bradley v. City of Richmond*, 227 U.S. 477 (1913); *Quong Wing v. Kirkendall*, 223 U.S. 59 (1912); *Southwestern Oil Co. v. Texas*, 217 U.S. 114 (1910); *Williams v. Fears*, 179 U.S. 270 (1900).

Quong Wing involved an equal protection challenge to a Montana statute which imposed a license tax on persons working in hand laundries but which exempted those working in steam laundries. *See* 223 U.S. at 62. Quong Wing, a hand launderer, argued that the tax violated the equal protection clause because of its "discrimination between the instrumentalities employed in the same business," *id.*, a claim similar to that raised here by petitioner Hill. *See* Pet. Br. 5. The Court rejected this argument, stating:

> A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. . . . [A] State may carry out a policy, even a policy with which we might disagree. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary. . . . If the State sees fit to encourage steam laundries and discourage hand laundries that is its own affair.

223 U.S. at 62-63 (citations omitted).[3]

In *Southwestern Oil* a Texas statute imposed an occupational tax on wholesale dealers in oil products. *See* 217 U.S. at 115-16. Wholesale dealers in other articles, however, were not subject to the tax. *See id.* at 117-18. A taxpayer challenged the tax under the equal protection clause asserting that "it arbitrarily selects and levies upon the *wholesale* business in [oil products], a tax of from fifty to one hundred times greater than is levied by the state upon wholesale business in other articles." *Id.* In rejecting this challenge the Court observed that the taxpayer's "view gives to the [Fourteenth] Amendment a scope that could not have been contemplated at the time of its adoption." *Id.* at 121. The Court further observed:

> [The statute] is not arbitrary legislation, except in the sense that all legislation is arbitrary. If

[3] *Amici* note that the statute at issue in *Quong Wing* also contained a gender based exemption which would likely be unconstitutional under more recent precedents. *See* 223 U.S. at 62. To the extent *Quong Wing* involved a challenge asserting that the State could not constitutionally discriminate between steam and hand laundries, it remains good law.

> it be within the power of the legislature to enact the statute, then arbitrariness cannot be predicated of it in a court of law. And it cannot be held to be beyond legislative power simply because of its classification of occupations. What were the special reasons or motives inducing the State to adopt the classification of which the Oil Company complains, we do not certainly know. Nor is it important that we should certainly know. It may be that the main purpose of the State was to encourage retail dealing in the particular articles . . . . If the statute had its origin in such a view, we do not perceive that this court can deny the power of the State to proceed on that ground.

Id. at 126.

The Court recently reaffirmed the validity of this venerable and essential rule:

> " 'The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive dis-

crimination against particular persons and classes.'"

Leathers v. Medlock, 499 U.S. at 451-52 (quoting *Regan*, 461 U.S. at 547-48 (quoting *Madden v. Kentucky*, 309 U.S. 83, 87-88 (1940))).[4]

As the foregoing demonstrates, a State, in creating tax schemes, has broad authority both in determining whether to tax or exempt particular occupations and in setting tax rates. There are sound reasons for the Court's traditional deference to these inherently legislative judgments. In formulating tax policy, legislatures must examine numerous and frequently competing considerations. And in striking the balance between these considerations, legislatures must necessarily make value judgments about their respective social worth.

Thus, unless a tax classification "discriminates invidiously" against a fundamental right or a suspect class, triggering a heightened standard of review, it is valid if it "bear[s] a rational relation to a legitimate governmental purpose." *Regan*, 461 U.S. at

[4] The Court has, of course, repeatedly applied this principle in rejecting taxpayer claims similar to those raised here by petitioners. *See Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Walters v. City of St. Louis*, 347 U.S. 231 (1954); *Independent Warehouses, Inc. v. Scheele*, 331 U.S. 70 (1947); *Casey Baking Co., Inc. v. Virginia*, 313 U.S. 117 (1941); *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *A. Magnano Co. v. Hamilton*, 292 U.S. 40 (1934); *Tax Commr's of Indiana v. Jackson*, 283 U.S. 527 (1931); *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930); *Swiss Oil Corp. v. Shanks*, 273 U.S. 407 (1927); *Heisler v. Thomas Colliery Co.*, 260 U.S. 245 (1922); *Bradley v. City of Richmond*, 227 U.S. 477 (1913); *Brown-Forman Co. v. Kentucky*, 217 U.S. 563 (1910); *Kehrer v. Stewart*, 197 U.S. 60 (1905); *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89 (1900).

547-48; *see also Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). The Court has further explained that a tax classification subject to rational basis review is valid if it is "reasonably related to the object of the legislation" and "if any state of facts reasonably can be conceived that would sustain it." *New York Rapid Transit*, 303 U.S. at 578; *see also Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509 (1937).

The Court's cases also make clear that when rational basis review applies, it is not the government's burden to prove the constitutionality of the tax. Rather, it is the taxpayer who bears the heavy burden of showing that the tax is "palpably arbitrary." *Lehnhausen*, 410 U.S. at 360. As the Court explained in *Regan*, "'[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.'" 461 U.S. at 547-48 (quoting *Madden*, 309 U.S. at 87-88).

B. The Jefferson County Occupational Tax Does Not Violate the Equal Protection Clause

In enacting its occupational tax, Jefferson County, in accordance with the state law granting it authority to impose the tax, exempted those occupations which are required to pay a license tax under state law. *See* pp. 2-3 *supra*. The occupational tax's exemptions do not violate the equal protection clause.

As petitioners concede, the classifications employed in Jefferson County's occupational tax scheme do not implicate fundamental rights or suspect classes. *See* Pet. 6. The tax scheme (including its exemptions) is paradigmatic economic legislation which is presumptively constitutional. Notwithstanding petitioners' bald assertion that the scheme's exemptions for

those occupations which are subject to the State's license tax are "unreasonable, arbitrary and irrational," Pet. Br. 15, the exemptions are similar to those upheld by this Court in numerous cases, all of which have escaped petitioners' attention. Adoption of the standard of equal protection review proposed by petitioners would result in the judicial usurpation of value judgments which are properly the province of legislatures. *See, e.g., Carmichael*, 301 U.S. at 509-10.

Indeed, even petitioners' caricature of the Alabama scheme demonstrates their fundamental misunderstanding of the respective roles of courts and legislatures under our Constitution. According to petitioners, "[m]anicurists, mule dealers, fortunetellers and engineers [who are exempted from the tax] are not fairly different in the workplace from teachers, police officers and law firm couriers [who are subject to it]. Doctors, plumbers and collections agents do not contribute anything to the fabric of Jefferson County society or government different from the contributions of secretaries, laborers and federal judges." [5] Pet. Br. 15.

The flaw in this argument is that the equal protection clause makes none of the value judgments which would support judicial invalidation of the legislative judgments made in enacting the tax. The clause does not require equality in taxation of all occupations. *See, e.g., Lehnhausen*, 410 U.S. at 359-60 (quoting *Allied Stores*, 358 U.S. at 526-27); *Bell's Gap Railroad*, 134 U.S. at 237. Nor does it require

[5] It bears noting that, in addition to federal judges, state and county officials (including state judges) are required to pay the Jefferson County occupational tax. *See* Jefferson County Ordinance No. 1120 §§ 1-2 (J.A. 35-37).

that the burdens of taxation be allocated among occupations in accordance with their relative contributions to society. Indeed, it is precisely because the criteria for making such determinations are so debatable that the Constitution leaves these questions to legislatures. *Cf. Lochner v. New York*, 198 U.S. 45, 75-76 (1905) (Holmes, J., dissenting). Thus, even if it is not sound policy to favor fortunetellers over teachers, "it is not the function of this Court . . . to consider the propriety or justness of the tax . . . or to criticize the public policy which prompted the adoption of the legislation." *Indiana v. Jackson*, 283 U.S. at 537; *see also Walters v. City of St. Louis*, 347 U.S. 231, 237 (1954) ("Our disapproval of the wisdom or fairness of [a tax classification] is not a ground for interference."). Democratic self-governance would, of course, be gravely harmed if courts were to do otherwise. As the Court observed in *Carmichael*, "[o]nly by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." 301 U.S. at 510.

Accordingly, notwithstanding petitioners' assertion that the occupations subject to and exempt from the tax "are not fairly different," Pet. Br. 15, the Court has consistently recognized that a legislature can rationally conclude that they are. *See, e.g., Walters*, 347 U.S. at 237; *Armour Packing Co. v. Lacy*, 200 U.S. 226, 235 (1906). The Court has also repeatedly made clear that the equal protection clause does not require the State to tax different occupations in the same manner. *Id.* As the Court has consistently observed, "the State has the right to classify occupations and to impose different taxes upon different occupations." *Kehrer*, 197 U.S. at 69.

Thus, even to the extent the Jefferson County tax scheme may result in disparities between the tax burdens of persons required to pay the occupational tax and those who escape it (because they pay license taxes), the equal protection clause provides no basis for invalidating it. *See, e.g., Southwestern Oil*, 217 U.S. at 121-27.[6] While the burden remains on petitioners to "negative every conceivable basis which might support" the tax, *Regan*, 461 U.S. at 547-48, there are several readily ascertainable bases for the exemptions at issue here.

As the Court has repeatedly recognized, a State has a legitimate interest in promoting what it conceives to be socially beneficial enterprises and occupations. *See, e.g., Carmichael*, 301 U.S. at 512. And the Court has further recognized that granting a tax exemption is a rational means of promoting such occupations. *See id.* In a similar vein, because state licensees already pay taxes to the State and county, the Alabama legislature could rationally conclude that subjecting licensees within Jefferson County to additional taxes at the county level would have a deleterious effect on them, especially in relation to licensees in the surrounding counties.

Moreover, the State could rationally have concluded that granting a tax exemption to state licensees would ensure the continued availability within the county of important professional services as well as the jobs provided by both business and professional licensees. States and local governments have a compelling interest in preserving the viability of urban

[6] More recently the Court in *Nordlinger* rejected an equal protection clause challenge to California's property tax assessment scheme notwithstanding evidence that it resulted in new owners paying tax at an amount seventeen times greater than the tax paid by the previous owner. *See infra* p. 17.

communities. Granting tax exemptions for professionals and businesses located in urban areas is a rational means of accomplishing this important governmental interest.

The Court has also recognized that a State has a legitimate interest in protecting taxpayers' reliance and expectation interests. As the Court acknowledged in *Nordlinger*, " 'The protection of reasonable reliance interests is not only a legitimate governmental objective: it provides an exceedingly persuasive justification.' " 505 U.S. at 13 (quoting *Heckler v. Mathews*, 465 U.S. 728, 746 (1984)). The *Nordlinger* Court also noted that "classifications serving to protect legitimate expectation and reliance interests do not deny equal protection of the laws." *Id.*

In *Nordlinger* the Court upheld California's property tax assessment scheme which capped increases in assessments for those who remained in their homes while assessing at market value newly constructed and newly purchased homes. 505 U.S. at 5-6. The scheme eventually produced substantial disparities between the tax burdens of newer and older owners; the evidence demonstrated that in some instances the bill of a new owner was 17 times the old owner's last bill. *Id.* at 7 & n.2. The Court nonetheless upheld the scheme because it was rationally related to California's legitimate interest in protecting the reliance and expectation interests of existing owners in not having to pay higher taxes. *Id.* at 12-14.

Here, it is equally conceivable that the Alabama legislature exempted those persons paying state license fees from Jefferson County's occupational tax for similar reasons. Alabama's license fees were enacted during a prolonged period of state fiscal and economic crisis; these occupations provided support to the State for more than thirty years before Jeffer-

son County was granted authority to levy its occupational tax. In granting Jefferson County occupational taxing authority, the Alabama legislature could have rationally concluded that because state licensees had borne the cost of government for numerous years during which other occupations (including those whose members are party to this suit) had paid no analogous tax, state licensees had developed reliance and expectation interests in not being subject to additional occupational taxes. Because it is clearly a legitimate state interest to protect the reliance and expectation interests of particular classes of taxpayers, and the classification employed—exempting those who pay license fees from the county occupational tax—is reasonably related to this interest, the exemption is constitutional.[7]

---

[7] Petitioner Hill also contends that the occupational tax violates the equal protection clause because it taxes her as "a domestic servant privately employed in commercial buildings" while it exempts "domestic servants employed in private homes." J.A. 2, 7 (Complaint at ¶¶ 2, 14). The Court has long recognized, however, that a legislature can rationally conclude that there are differences between these occupations requiring different tax treatment. *See, e.g., Quong Wing*, 223 U.S. at 62-63.

Most particularly, in *Carmichael*, which involved an equal protection challenge to an unemployment compensation tax assessed against employers, the Court specifically upheld a tax classification which excluded from its definition of employment "[d]omestic service in a private home." *See* 301 U.S. at 505 n.1. In *Carmichael*, an employer challenged the tax on the ground that it was arbitrary to require it to pay the tax while exempting, *inter alia*, employers of servants in private homes. *Id.* at 512. The Court rejected this argument, reasoning that "[r]elatively great expense and inconvenience of collection may justify the exemption from taxation of domestic employers . . . ." *Id.* at 513.

The avoidance of the administrative expense of collecting its occupational tax likewise provides a rational basis for

The foregoing is not intended to be an all inclusive discussion of the rational bases which support the tax. But as it shows, there are several conceivable states of facts which demonstrate its constitutionality. For the purpose of judicial review, it does not matter whether any of these factual scenarios is supported by a legislative record. As the Court has noted:

> A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions, it was not aware of facts which afford reasonable basis for its action.

Carmichael, 301 U.S. at 510; *see also Southwestern Oil*, 217 U.S. at 121-27.

A legion of precedents recognizes that the democratic process is the proper forum for redressing grievances which are premised on the putative economic unfairness of a tax.[8] Petitioners present no reason to depart from this principle.

Jefferson County's decision to exempt domestic servants employed in private homes.

[8] While petitioners have ignored the numerous precedents which refute their claim, they cite several cases in which the Court has applied rational basis review to invalidate state laws. None of these cases, however, supports the far reaching result which petitioners seek—the transformation of judicial review of social and economic legislation from a process in which courts defer to the value judgments of legislatures to one in which courts impose their own.

The tax scheme at issue here simply does not implicate any illegitimate state interest. Alabama and Jefferson County

CONCLUSION

The judgment of the Alabama Supreme Court should be affirmed.

Respectfully submitted,

RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850
* *Counsel of Record for the*
Amici Curiae

February 1996

---

have not classified—either by subjecting to, or exempting from tax—any category of persons on the basis of date of residency in the State. Thus, petitioners' reliance on cases such as *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Zobel v. Williams*, 457 U.S. 55 (1982), is misplaced. Nor does the tax scheme classify on the basis of State of residency. Thus, petitioners' reliance on *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869 (1985), and *WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117 (1968), is likewise misplaced.

Nor is petitioners' reliance on *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster Cty.*, 488 U.S. 336 (1989), any more availing. In *Allegheny Pittsburgh*, the State had adopted a policy in its constitution that all real property was taxable at a uniform rate according to its estimated market value. *See* 488 U.S. at 338. The assessor's intentional systematic undervaluation of property which had not been recently sold was thus an irrational means of carrying out the State's adopted policy of taxing at the estimated market value. *See id.* at 345-46. Here, in contrast, Alabama has not adopted a policy requiring the uniform taxation of all persons, whether they be payers of state license fees or the county tax. *Cf. Nordlinger*, 505 U.S. at 14-15. *Allegheny Pittsburgh* thus does not support petitioners' claim.